IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

M/s Bheru Construction Private Limited, Jodhpur v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.1856/1992
under Article 226 of the Constitution of India.

Date of Order : 2nd May, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. M.R.Singhvi, for the respondents.

BY THE COURT :

A writ in the nature of certiorari is sought by the petitioner to quash the order dated 17.3.1992 passed by the Collector, Jodhpur exercising powers under Section 80 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as “the Act of 1959”). By the judgment impugned the Collector, Jodhpur while accepting an application preferred under Section 80 of the Act of 1959 by the Municipal Council, Jodhpur quashed and set aside the lease deed dated 4.2.1986

executed by Municipal Council, Jodhpur in favour of respondent No.4 Shri Bhuraram Choudhary. As a consequent to quashing the lease deed dated 4.2.1986 the Collector, Jodhpur also quashed the sale deed dated 30.6.1989 executed by Shri Bhuraram Choudhary in favour of the petitioner pertaining to the land in dispute.

The factual matrix necessary to be noticed for adjudication of present writ petition is as follows:-

The Municipal Council, Jodhpur under Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 (hereinafter referred to as “the Rules of 1974”) by a lease deed executed and registered on 4.2.1986 transferred a piece of land on lease hold basis for a period of 99 years to Shri Bhuraram Choudhary (respondent No.4). According to the petitioner the land leased out as above was already under possession of Shri Bhuraram Choudhary even prior to 1960 and he also raised certain constructions thereon.

Shri Bhuraram Choudhary after getting approval from Municipal Council, Jodhpur by an instrument of sale dated 30.6.1989 transferred his interest in the land in dispute to the petitioner i.e. a company registered under the Indian Companies Act.

As required under Section 170 of the Act of 1959 the Municipal Council, Jodhpur accorded permission to the petitioner to raise construction at the land in question and the petitioner accordingly raised construction by investing a sum of Rs.30 lacs (approximately).

The Municipal Council, Jodhpur in the year 1992 preferred an application under Section 80 of the Act of 1959 to quash the lease deed dated 4.2.1986, sale deed dated 30.6.1989 and also to acquire vacant possession of the land in dispute. The application aforesaid was founded on following grounds:-

> (1)being a commercial land, the land in dispute could have been transferred by way of public auction only as per Rule 15 of the Rules of 1974;
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> (2)before effecting transfer of commercial land by sale deed dated 4.2.1986 no reserve price was determined in accordance with law and the elected board transferred valuable property in a throw away price;
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> (3)no prior sanction for transfer of land was taken from the Director, Department of Local Self Government i.e. necessary in terms of Rule 30 of the Rules of 1974;
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> (4)the licence was granted in violation of Rule 20 of the Rules of 1974 as there was no 2/3rd area of the maximum permissible limit was constructed on the land in dispute at

the time of its transfer to Bheru Construction Company (present petitioner);

(5)there was no previous consent of the lessor for the transfer of the land to Bheru Construction as it was required to have under the conditions prescribed in the lease deed;

(6)no lawful right stood vested with Shri Bhuraram towards the land in dispute, therefore, the sale deed dated 30.6.1989 executed by him does not confer any valid right, title or interest in favour of Bheru Construction Company; and

(7)the land in question was not open for the transfer being part of public way.

The petitioner submitted a reply to the application and contested the same by raising preliminary objections as well as on merits. The preliminary objections challenging maintainability of the application under Section 80 of the Act of 1959 raised by the petitioner before the Collector are as follows:-

(1)the land was transferred by executing sale deed dated 4.2.1986 and the same was registered by Sub Registrar, Jodhpur, therefore, it is an action completed, whereas under Section 80 of the Act of 1959 validity and propriety of a proposal for lease, transfer or sale of a government land could be examined. In the instant matter the

proposal stood implemented culminating into a registered sale deed, that could not be set aside by the Collector while exercising powers under Section 80 of the Act of 1959; and

(2)the land was transferred in favour of Bhuraram on 4.2.1986 and then after getting permission from Municipal Council the land was further transferred to Bheru Construction Company and it raised construction after getting sanction in accordance with the provisions of Section 170 of the Act of 1959. The Municipal Council, Jodhpur filed application under Section 80 of the Act of 1959 in the year 1992 i.e. after a lapse of more than six years from the date of execution and registration of sale deed dated 4.2.1986 and the delay caused in filing the application is unreasonable and, therefore, the application is not required to be entertained.

The petitioner while contesting the application under Section 80 of the Act of 1959 on merits urged that the land in dispute was not a commercial land, Shri Bhuraram Choudhary was tenant of the Municipal Council, Jodhpur and was paying Rs.90/- per month as rent and he was in possession of the property, as such the land could have been sold to him otherwise than public auction, the reserve price was determined and then only the land was leased out to Shri Bhuraram Choudhary, there was no violation of the provisions of Rules 30 and 20 of the Rules of 1974.

The construction was raised after getting due sanction from the competent authority of the Municipal Council. The petitioner also urged that before executing the sale deed dated 30.6.1989 the permission was sought by Shri Bhuraram Choudhary and the same was granted by the Commissioner, Municipal Council, Jodhpur by his communication dated 14.6.1989. It was also emphasised that no part of land in dispute is public way or is being used as a public way. It was also urged before the Collector that prior to 4.2.1986 Shri Bhuraram was paying only Rs.90/- per month as rent against his possession over the land in question, therefore, the land was transferred to him against the consideration of Rs.93,333/-, meaning thereby on account of that the Municipal Council secured interest in a tune of Rs.1200/- per month i.e. quite a higher amount than the monthly rent of the land in dispute which was then charged by the Council. According to the petitioner the decision to transfer the land in favour of Shri Bhuraram Choudhary was in public interest and also in favour of the Municipal Council.

The Collector, Jodhpur after hearing the parties accepted the application under Section 80 of the Act of 1959 by holding as under:-

> (1)the execution of lease deed dated 4.2.1986 with consideration of Rs.93,333/- was in violation of provisions of Rule 30 of the Rules of 1974 as no prior approval from the

Director, Department of Local Self Government was taken;

(2)no construction to the extent of 2/3rd part of permissible limits was existing while transferring the land to Bheru Construction, therefore, the transfer was in breach of provisions of Rule 20 of the Rules of 1974;

(3)the land in question could have not been transferred by Shri Bhuraram Choudhary before a period of 10 years from the date of execution of lease deed and such a condition could have been relaxed by Municipal Council in special circumstances but while granting permission to Shri Bhuraram for transfer of land in dispute no reason to relax the condition aforesaid was given.

The Collector also decided the preliminary objections raised by the petitioner against him by holding that there is no limitation prescribed under the Act of 1959 for exercising powers under Section 80 and under Section 80 not only validity of proposal can be examined but all the actions taken in pursuant to the proposal can also be declared illegal and be cancelled. A direction was also given by the Collector to initiate disciplinary action against the erring officers of the Municipal Council.

Challenge to the order impugned dated 17.3.1992 passed by the Collector is given by this petition for writ mainly on following grounds:-

(1)the Collector exceeded the jurisdiction vested with him while setting aside the lease deed dated 4.2.1986 while exercising powers under Section 80(2) of the Act of 1959;

(2)the Collector erred while entertaining and accepting the application preferred by Municipal Council after an inordinate delay of more than six years; and

(3)the Municipal Council by application of principles of promissory estoppel is estopped to give challenge to the licence granted in favour of Shri Bhuraram and the sale made in favour of the petitioner as the council not only permitted Shri Bhuraram to transfer the land in question but also permitted the petitioner to raise construction and the petitioner in its turn acted upon it by raising construction with a huge investment i.e. of Rs.30 lacs (approximately).

Beside above, the counsel for the petitioner has contended that State of Rajasthan while exercising powers under Section 297 of the Act of 1959 issued an order termed as “Municipalities (Sale by Lease of 99 years of sites/shops) Order, 2000 (hereinafter referred to as “the Order of 2000”) authorising the settlement committees constituted by Government of Rajasthan under the Order referred above, to sale on lease hold basis for 99 years, the shops or sites etc.

those have been given on licence/rent by the Municipal Board during the period commencing from 21.1.1950 to 30.12.1983 at the rate of 30% of the reserve price, an additional amount of 5% is to be charged on the value if the original licencee has transferred his rights in duration referred above. On basis of the Order of 2000 it is urged that even if the lease deed executed in favour of Shri Bhuraram is held to be invalid then too he would be treated to be continued tenant as he was having possession over the land in dispute since 1960 with a rent of Rs.90/- per month and the petitioner is also required to be treated as tenant being stepped into shoe of Shri Bhuraram. The tenancy being of during the period from 21.1.1950 to 31.12.1983, the petitioner is entitled to have the lease deed executed at 30% reserve price in accordance with the order of 2000.

Per contra, it is contended by learned counsel for the Municipal Council that no error was committed by the Collector while setting aside the lease deed dated 4.2.1986 by the order impugned dated 17.3.1992. According to counsel for the respondent Council the Collector has not exceeded the jurisdiction vested with him while setting aside the lease deed dated 4.2.1986 as under Section 80(2)(b) of the Act of 1959 any action or proceedings taken in pursuance of the proposal made for lease, sale or transfer of the government land is not in accordance

with or is in contravention of provisions of the Act of 1959 or the Rules framed thereunder then any action on proceedings taken in pursuance thereof may be declared illegal. According to counsel for the respondents there was no delay in filing the application under Section 80 as no limitation is prescribed under the Act of 1959 to invoke the powers under Section 80. It is also contended by learned counsel for the respondents that the lease deed was executed in contravention of the Rules of 1974, therefore, it does not vest any right with Shri Bhuraram or the petitioner and, therefore, the issue of delay in filing the application under Section 80 of the Act of 1959 is absolutely insignificant and non-consequential. It is also urged that challenge to the lease deed dated 4.2.1986 was given being in violation of the statute, therefore, the principles of promissory estoppel are having no application in present controversy. So far as the Order of 2000 is concerned, it is contended by counsel for the respondents that the same is subsequent to the order dated 17.3.1992, therefore, it is having no role to play in present set of circumstances.

Heard counsel for the parties.

The first issue required to be adjudicated is that whether the Collector was vested with jurisdiction to set aside the lease deed dated

4.2.1986 while exercising powers under Section 80(2) of the Act of 1959. Section 80(2) of the Act of 1959 reads as under:-

> "80(2)(a)the State Government or any Officer authorised by it in this behalf may, for the purpose of satisfying as to the correctness, legality, or propriety of any proposal to lease, sale or transfer of any Government land made by or on behalf of a board or by any member Chairman, Vice-Chairman or Officer of a board or by any member Chairman, Vice-Chairman or Officer of a board call for the record and may while doing so direct that pending the examination of the matter, the proposal to lease, sell or transfer of the Government land shall remain in abeyance and no action in furtherance thereof shall be taken till the decision of the State Government or of the aforesaid officer under Sub-sec.(2)(b).
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> (b)If after examination of the record and after giving to the person interested in such proposal, a reasonable opportunity of being heard, the State Government or the officer authorised as aforesaid, is satisfied that the proposal to lease, sell or transfer the Government land is not in accordance with or in contravention of the provisions of this Act, it may by order published in the Official Gazette, modify, cancel or rescind wholly or in part the proposal made for lease, sale or transfer of the Government land or any action or proceeding taken in pursuance thereof or may give any other direction as may be deemed proper."

The contention of counsel for the petitioner is that the State Government or any officer authorised by it in this behalf may for the purpose of satisfying as to the correctness, legality or propriety of any proposal to lease, sale or transfer of any Government land made by or on behalf of a board or by any member, Chairman, Vice-Chairman or Officer of a board may call for the relevant record and revise the proposal, as such the powers under Section 80(2) of the Act of 1959 are confined to revise a proposal to lease, sale or transfer of the Government land and if the proposal has acquired finality then for that such completed action powers under Section 80(2) of the Act of 1959 cannot be exercised.

I do not find any force in the contention so raised. It is true that a proposal to lease, sale or transfer of any government land by or on behalf of the board or by its other authorities referred in Section 80(2) of the Act of 1959 may be revised by examining its correctness, legality and propriety but at the same time if it is found in contravention of the Act of 1959 and the Rules framed thereunder then all subsequent actions may also be dealt with in accordance with law by the Collector. The provisions of Section 80(2)(b) of the act of 1959 are quite clear in this regard as the State or its officer authorised is empowered to give any appropriate direction for any action or proceedings taken in pursuance of finding a

proposal to lease, sale or transfer in contravention of the Act of 1959 or the rules framed thereunder. The Collector, being an officer authorised, therefore, is having ample power to set aside a lease deed if the proposal for lease itself is not valid.

Beside the provisions of Section 80(2) of the Act of 1959, Hon'ble Supreme Court in the case of Mithoo Shahani and others v. the Union of India and others, reported in AIR 1964 SC 1536, while dealing with the question as to whether a sanad based on an order can be survived on declaration of the order itself bad in eye of law, held as under:-

> "Subsequent to this decision a case arose before the High Court of Punjab : Balwant Kaur v. Chief Settlement Commr. (Lands), ILR (1964) 1 Punj 36 : (AIR 1964 Punj 33) and a Full Bench of that Court by a majority dissented from this view and held that where an order making an allotment was set aside the title which was obtained on the basis of the continuance of that order also fell with it. We are clearly of the opinion that the judgment of the Punjab High Court is correct. The relevant provisions of the Act and the Rules have all been set out in the decision of the Punjab High Court and we do not consider it necessary to refer to them in any detail. It is sufficient to say that they do not contain any provision which militates against the position which is consistent with principle and logic. It is manifest that a sanad can be lawfully issued

> only on the basis of a valid order of allotment. If an order of allotment which is the basis upon which a grant is made is set aside it would follow, and the conclusion is inescapable that the grant cannot survive, because in order that that grant should be valid it should have been effected by a competent officer under a valid order. If the validity of that order is effectively put an end to it would be impossible to maintain unless there were any express provision in the Act or in the rules that the grant still stands. It was not suggested that there was any provision in the Act or in the rules which deprives the order setting aside an order of allotment of this effect. We do not therefore consider that there is any substance in the second point urged by learned Counsel."

Thus, in view of the clear provisions of Section 80(2) of the Act of 1959 and also in view of the law laid down by Hon'ble Supreme Court in the case of Mithoo Shahani (supra) the Collector is having jurisdiction to set aside a lease deed if proposal itself is in contravention of the provisions of the Act of 1959 or the Rules framed thereunder and the validity of that proposal is effectively put to an end. The only exception is the availability of a specific provision to protect the consequential action but that is not here in the Act of 1959 and the Rules framed thereunder.

The second contention of counsel for the petitioner is that the Collector erred while entertaining and accepting the application under Section 80(2) of the Act of 1959 after an inordinate delay of six years. The counsel for the respondents tried to meet the contention aforesaid by contending that no limitation is prescribed under the Act of 1959 for initiating proceedings under Section 80(2) of the Act of 1959. The counsel for the petitioner has substantiated his contention by placing reliance upon a judgment of Hon'ble Supreme Court in the case of Mansaram v. S.P.Pathak and others, reported in (1984) 1 SCC 125, holding therein that a power should always require to be exercised in a reasonable manner within the reasonable time where no time limit is prescribed under the statute. The relevant portion of the judgment referred above reads as under:-

> “where power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within a reasonable time. This is too well established to need buttressing by a precedent. However, one is readily available in State of Gujarat v. Patel Raghav Natha. In that case Commissioner exercised suo motu revisional jurisdiction under Section 211 of the Bombay Land Revenue Code which did not prescribe any period of limitation for exercise of revisional jurisdiction. The Commissioner exercised revisional

> jurisdiction one year after the Collector made the order which was sought to be revised. The High Court set aside the order of the Commissioner. In the appeal by State of Gujarat, this Court declined to interfere holding inter alia that the revisional power in the absence of prescribed period of limitation must be exercised within a reasonable time and period of one year was held to be too late. This aspect must be present to the mind of House Allotment officer before just rushing in on an unproved technical contravention brought to his notice contrived by the successor-in-interest of the deceased landlord, and evicting the appellant 22 years after his entry and 9 years after his retirement on the short ground that his entry in the year 1954 was in contravention of Clause 22(2).”

The reliance is also placed upon a Single Bench judgment of this Court in the case of Gordhan & Ors. v. State of Rajasthan & Ors., SBCivil Writ Petition No.3447/1993, decided on 24.2.2005, wherein this Court held as under:-

> “It is true that there is no limitation prescribed for preferring revision petition under the Act of 1953 but it is settled law that where no period of limitation is prescribed, then also, the action is required to be taken within a reasonable period and in some of the cases, even delay of two years was found to be not a reasonable period.

So far as the period of limitation is concerned, it can be liberally construed but where property rights are involved and there is no stay order against the enjoying party, then the party in possession may act adversely to his own interest by incurring expenditure on immoveable property. Even in cases where no such act is done by the allottee, then also by passing of time, he reasonably believed that his right is not being challenged by anybody and thereby he may feel that he is secured having immoveable property with him and need not to search another immoveable property for his residence or business and by lapse of time, it may become sometimes impossible for the allottee to purchase the land for having roof over his head, therefore, when the State authorities themselves, who alienate the property by following the procedure prescribed under any Act, find complaints or irregularity (in procedure), then action should be taken without any delay because the delayed action is not only more adversely affect the allottees but also affect the revenue of the State or the property of the State for which the authorities are custodian only and are expected to act as a prudent man and act of prudence in such matters relating to public property is much more onerous and requires care because the private person may destroy his own property but no such right is available to the persons occupying the government post with a right to manage including disposing of the immoveable property of the Government because it is property of the public. It is true that when

> in a case, there are allegations of fraud and collusion between the allottees and officers who could have taken action, then there may be liberal approach for condonation of delay so as to protect the public interest but where allegations are not of fraud or collusion and when the matter has come to the notice of all the competent authorities and they do not take any action in time, then, those persons may be held liable for damages and it is not necessary to condone the delay merely on the round that there are some allegations against the disposal of the immoveable property. Each case is required to be examined on the facts of that case."

In view of the judgments referred above, it is clear that even if a limitation is not prescribed under the statute to exercise the powers then too the power vested with the authority is required to be exercised within a reasonable time and in a reasonable manner. If the action sought to be corrected or examined otherwise is not an out come of fraud or is not in patent violation of mandatory provisions or if is capable for rectification of error alleged by its validation, then the power to examine correctness, legality and propriety should not be exercised at a belated stage.

In the instant matter it is the position admitted that the land in question was leased out to Shri Bhuraram on 4.2.1986. Shri Bhuraram after getting

permission from the Commissioner, Municipal Council transferred the land to the petitioner and the petitioner after getting sanction to raise construction, constructed a building by investing an amount of Rs.30 lacs (approximately). Respondent Municipal Council kept silence during this entire period and after lapse of six years in the year 1992 moved an application under Section 80(2) of the Act of 1959 for correcting the alleged error. During the period of six years indispensable rights accrued in favour of the petitioner due to in action on part of the respondent Council. If the respondent Council would have not granted any permission in the year 1989 to Shri Bhuraram to transfer the land in question to the petitioner or atleast may have not granted the sanction for raising construction to the petitioner if there was any doubt about correctness, legality and propriety of the licence granted to Shri Bhuraram. The Municipal Council allowed to take place all the actions as mentioned above and then abruptly choose to challenge the licence granted in favour of Shri Bhuraram in the year 1986. This belated action of the Municipal Council is certainly having a colour of arbitrariness and essence of unreasonability, therefore, the Collector should not have entertained the application under Section 80(2) of the Act of 1959 specially looking to the fact that there is no allegation of the fraud in total transaction.

As stated in preceding paras Shri Bhuraram was having old possession over the land in dispute. The possibilities of settling the question with regard to his possession on the land may had been there in mind of the Municipal authorities while granting licence to Shri Bhuraram without proceeding for auction and it may be a bonafide one to avoid unnecessary litigation or may it be looking to the equity. Such kind of decisions on face cannot be said fraud or malicious, if not otherwise proved. The learned Collector, therefore, by judgment impugned dated 17.3.1992 erroneously entertained and accepted the application under Section 80 of the Act of 1959, after a lapse of six years from the date of transfer of land.

Another important aspect of the matter is that so far as the petitioner is concerned, he is a bonafide purchaser and he have to face adversities for the wrongs of other, if any was there. Respondent Municipal Council granted permission to Shri Bhuraram to sale the land in dispute and then also granted sanction for raising construction at the land in dispute to the petitioner. The petitioner was under a bonafide belief about genuineness of the rights granted to Shri Bhuraram and, therefore, purchased the land and also invested a huge amount thereon. Whatever action, therefore, is sought to be taken by the Municipal Council will most adversely effect the

rights of the petitioner who is a person innocent being having no knowledge of the errors, if any, committed by the Municipal authorities in the year 1986.

This Court in the case of Surendra Singh Meena v. J.N.V.University & Anr., SBCivil Writ Petition No.551/1996, decided on 10.4.2006, held as under:-

> "There cannot be two opinions that the University is having a right to rectify a bonafide error but if such an error cannot be corrected without breaking open or affecting the rights of innocent person who was not aware of the existence of the error when his rights accrued and on basis of such right further independent rights came into existence and if such error cannot be rectified without interfering with the new independent rights accrued then the interest of justice demands to validate such error instead of giving rise to highly unjust and arbitrary consequence of its rectification."

In the present case also the error crepted while granting licence to Shri Bhuraram cannot be corrected without breaking open or affecting the rights of the petitioner who was not aware of the existence of any error when his rights accrued and on basis of such rights he took risk to invest a huge amount. The error sought to be rectified by the

Municipal Council is having unjust and arbitrary consequence qua the petitioner, therefore, in any case the errors required to be validated.

As, for the reasons mentioned above, I have already held the order impugned passed by the Collector dated 17.3.1992 bad in eye of law, therefore, I am not adjudicating the other contentions raised by counsel for the petitioner giving challenge to the order impugned.

In view of whatever discussed above, this petition for writ succeeds and, therefore, the same is allowed. The order impugned dated 17.3.1992 passed by the Collector, Jodhpur in Municipal Case No.1/92, Municipal Board, Jodhpur v. Shri Bhuraram & Anr., is declared illegal and, therefore, same is quashed with no order as to costs.

(GOVIND MATHUR),J.

kkm/ps.